

In the Matter of License No. 122522
Issued to: FREDERICK P. DIETRICH

DECISION AND FINAL ORDER OF THE COMMANDANT
UNITED STATES COAST GUARD

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FREDERICK P. DIETRICH

This appeal has been taken in accordance with Title 46 United States Code 239(g) and Title 46 Code of Federal Regulations 137.11-1.

The Examiner rendered his original decision on 19 October, 1951, but the case was remanded to the Examiner by my order of 9 January, 1952, for further action because the record did not disclose that the Examiner had complied with 46 C.F.R. 137.09-60 by ruling upon the proposed findings of fact and conclusions of law which had been submitted by Appellant pursuant to section 8(b) of the Administrative Procedure Act and 46 C.F.R. 137.09-60 (Headquarters Appeal No. 549).

On 19 September, 1952, the same Coast Guard Examiner rendered his decision on remand at Seattle, Washington, after considering and ruling upon the findings of fact and conclusions of law proposed separately by Appellant and the Investigating Officer. The Examiner accepted twenty-three of Appellant's twenty-six proposed findings as being substantially in accord with the evidence which consists of stipulated portions of the record of the Marine Board of Investigation convened at Lihue, Kauai, T. H.; and the other three findings (Nos. 9, 12 and 16) were accepted in part. The conclusions of law submitted by Appellant were rejected as being inconsistent with the conclusions of the Examiner which were said to be based upon substantial and probative evidence.

The Examiner concluded that the charge of negligence had been proved by proof of four of the five specifications to which Appellant had entered pleas of "not guilty" at the hearing. These four specifications allege, in substance, that while serving as Master on board the American SS ANDREA F. LUCKENBACH under the authority of the license described above, on or about 11 March, 1951, while navigating said vessel in the vicinity of the Island of Kauai, T. H., under conditions of poor visibility, Appellant contributed to the grounding of the ship by wrongfully setting a course too close to shore (First Specification); failing to establish the vessel's position by proper bearings while in sight of Kahala Point Light (Second Specification); failing to reduce speed and proceed with caution when the position of the ship was not accurately ascertained (Fourth Specification); and failing to obtain and properly use information available from the vessel's radio direction finder (Fifth Specification). The Examiner concluded that the Third Specification, which alleged that Appellant wrongfully failed to obtain and properly use information available to him from the vessel's echo sounding equipment, was not proved.

At the conclusion of his decision, the Examiner entered an order suspending Appellant's License No. 122522, and all other valid licenses held by him, for a period of twelve months from 19 September, 1952.

In this appeal from the order of the Examiner, it is contended that his findings and conclusions are not based upon reliable, probative and substantial evidence because the Examiner adopted the mistaken testimony of Raymond F. Mant, a resident of Kauai, who stated that he saw the lights of the ship 500 yards offshore, in preference to the undisputed testimony of several members of the ship's crew as to bearings taken on Kahala Point Light which fixed the position of the ship at 2.5 to 3 miles offshore when she struck a pinnacle rock or some other submerged object. The latter conclusion is said to be corroborated by these facts: only about 20 feet of white water was observed when the lookout reported "breakers" just prior to the impact; the fathometer failed to indicate any depth of water although it was checked at about 2000 and again immediately after the ship struck; and the fix at 2030 showed the ship's position to be 3 miles off shore.

Appellant also contends that, in view of the undisputed testimony, the Examiner improperly rejected the proposed findings: that Kahala Point Light was identified and plotted when bearing 20 degrees on the port bow at 1925 (Appellant's Finding No. 9); that this light was bearing four points on the port bow at 1950 (Appellant's Finding No. 12); and that at 2004 (rather than at 2000 as stated in the Examiner's Finding No. 19), the same light was bearing one point abaft the port beam (Appellant's Finding No. 16).

It is further urged that the Examiner failed to include, or otherwise failed to recognize in his decision, some of Appellant's proposed findings which the Examiner had accepted. The Examiner found that Kahala Point Light was sighted "at 1915 . . . bearing twenty miles on the port bow" (Finding No. 15) contrary to the accepted finding that the light was seen "at 1925 . . . 20 degrees on the port bow" (Appellant's Finding No. 9). The Examiner failed to make any finding similar to the accepted finding that "at 1955 . . . the light was observed 2 points forward of the port beam" (Appellant's Finding No. 13). The Examiner stated that Appellant used the echo-sounding equipment only after the vessel was in extremis (Examiner's Decision, page 10) although the Examiner had accepted the proposed finding that the fathometer was turned on "at about 1930 or 1935" (Appellant's Finding No. 11). The Examiner's findings, that the ship "came to a dead stop in the water some three-quarters of a mile from the point where the grounding had taken place" (No. 24) and "at approximately 2030 hours cross-bearings . . . placed the vessel about three miles off shore" (No. 30), are in agreement with Appellant's proposed and accepted Findings Nos. 23, 24 and 25. But these findings support the conclusion that the ship could not have been near the shore when she struck since she was 3 miles off shore after drifting about three-quarters of a mile; and they do not support the Examiner's statement that he "cannot subscribe to any other theory than that a grounding on the island of Kauai took place." (Examiner's Decision, page 9).

It is concluded that since the only reliable, probative and substantial evidence shows that the vessel was well off shore in deep and, apparently, safe water when she struck a submerged object which subsequently caused her grounding, there is no proof that the vessel grounded on the island of Kauai or the adjacent reef. Therefore, there is no proof that there was a grounding which was

contributed to by any negligence on the part of Appellant.

Appearances: Messrs. Robertson, Castle and Anthony of Honolulu, Hawaii, By William F. Quinn, Esquire, of Counsel.

Based upon my examination of the record submitted, I hereby make the following

FINDINGS OF FACT

Between the dates of 4 March, 1951, and 11 March, 1951, inclusive, Appellant was serving on board the American SS ANDREA F. LUCKENBACH, Official No. 253865, and acting under the authority of his License No. 122522 while the ship was enroute from San Francisco, California, to Yokohama, Japan, carrying five passengers and a cargo valued at approximately three million dollars.

The LUCKENBACH, a C-2 type cargo vessel of 8170.87 gross tons, departed from San Francisco on 4 March, 1951, with Captain C. Holtman in command. Appellant was serving in the capacity of Second Mate and Robert D. Timmerman was the Third Mate.

On 8 March, 1951, the ship was diverted to Honolulu, T. H., as a result of the Master's serious illness. On 11 March, the Master was hospitalized at Honolulu and Appellant assumed command as Master in accordance with dispatch orders from the owner company. Third Mate Timmerman was promoted to serve as Second Mate.

At 1250 on 11 March, 1951, the LUCKENBACH got underway from Honolulu and resumed her voyage to Yokohama. Her draft was 25 feet 8 inches, forward, and 28 feet 3 inches, aft. The gyrocompass had a westerly error of not more than one degree.

At 1320, the pilot was dropped and the ship's speed was set at full ahead of approximately 15 knots. When Barbers Point Light on the island of Oahu was bearing 350 degrees gyro and was three miles distant at 1415, the LUCKENBACH took her departure on course 312 degrees gyro. Steering was shifted from manual control to automatic pilot.

If the LUCKENBACH had made good a course of 312 degrees true, she would have passed Kahala Point Light abeam to port at a distance of about 4.5 miles after traversing the Kauai Channel for a distance of approximately 87 miles. If the gyrocompass error was one degree westerly, then the true course of 311 degrees would have caused the ship to pass Kahala Point Light abeam by 3.5 miles.

Kahala Point Light is on the northeast coast of Kauai Island, T. H. The coast line is sharply indented immediately to the west of Kahala Point Light. But beyond this point the land extends northward in such a manner that a course line of 312 degrees true, which passes at a distance of 1.5 miles from Kahala Point Light, will cross the shoals and rocky reefs which are close inshore in the vicinity of the 222 foot promontory to the north of Papaa Bay. This area is between two and three

miles beyond the intersection of the 1.5 mile perpendicular (between the course line and the light) and the course line of 312 degrees true.

Appellant intended to pass Kahala Point Light abeam at a distance of 4.5 miles but he did not make any allowance for possible gyrocompass error or for the set and drift of the current in determining the course to be steered.

The ship's position was not fixed between 1415 and 2030 on 11 March, 1951, nor did Appellant order any change of course or speed prior to the grounding at 2005 on this date. The radio direction finder aboard the vessel was not used after departing from Honolulu and the loran equipment was not operative.

During the crossing of Kauai Channel, the sky was overcast, visibility was good, and the sea was smooth with a moderate ground swell from the northeast. As the LUCKENBACH approached Kauai at nightfall and the outline of the island could be seen vaguely up ahead of the ship, there were intermittent heavy rain squalls which, at times, reduced visibility from the ship to less than one mile.

Second Mate Timmerman was the watch officer on the 1600 to 2000 watch. At 1925, he observed a light bearing roughly one point on the port bow and identified it as Kahala Point Light; but no navigational instrument was used to determine accurately the bearing of the light. At about the same time as Timmerman sighted the light, the lookout on the flying bridge reported that he also saw a light one point on the port bow.

At all times after 1925, Appellant was on the bridge or in the immediate vicinity of it.

At about 1930 or 1935, Timmerman turned on the fathometer which was capable of registering depths up to about 200 fathoms. It did not register any sounding at this time. At 1935, the ship ran into a heavy rain squall and steering was shifted to hand control until the weather cleared and visibility improved temporarily at about 1945. The light was not visible during the interim period of time.

At 1950, Timmerman obtained an accurate bearing on Kahala Point Light by using the azimuth circle on the gyrorepeater on the port wing of the bridge. The light was then bearing 45 degrees on the port bow and this line of position was plotted on the chart.

Another heavy rain squall struck the ship at about 1955 and visibility was greatly reduced but the same course and speed was maintained. The weather prevented the Second Mate from obtaining a beam bearing on Kahala Point Light.

Junior Third Mate Alfred G. Gluck was preparing to relieve Second Mate Timmerman when the former glimpsed a light approximately one point abaft the port beam a short time before 2000. This light was not definitely identified as Kahala Point Light, no bearing was taken on it, and the heading of the ship at that instant was not determined.

At approximately 1957, a resident of Kauai Island, Mr. Raymond F. Mant, who was in his house on the beach about 1.5 miles northwest of Kahala Point Light, observed the navigation lights of a large rapidly moving vessel proceeding in a northerly direction and passing very close to the shore. (The regular shipping lane is 8 to 10 miles offshore.) He could see the ship's lights for about seven minutes before they suddenly disappeared.

Mate Gluck had not yet relieved the watch when both the oncoming and the recently relieved lookouts saw breakers close aboard on the port side a matter of seconds before the vessel struck. The lookouts reported the breakers to the bridge. Mate Timmerman immediately changed to hand steering control and put the wheel hard right. At 2005 and before the ship had commenced to swing to starboard, the LUCKENBACH struck a reef, or some other projection of land located close inshore, three times in rapid succession on the port side. The order was given to stop the engines as the ship lurched to starboard and continued through the water for about three-quarters of a mile under the hard right rudder until her heading was 132 degrees gyro.

The fathometer did not indicate any depth of water when it was checked by Appellant shortly after the grounding. The same negative result was obtained with the hand lead.

At approximately 2015, Mr. Mant again observed the lights of a vessel. This time, he saw a slow moving, southbound ship which was farther offshore than the northbound one which he had seen earlier. Official records indicate that no vessel, other than the ANDREA F. LUCKENBACH, was in this area at that time.

The position of the vessel was fixed, for the first time since 1415, when cross bearings were obtained on Kahala Point and Ninini Point Lights at 2030. It was then determined that the ship was between 2.5 and 3 miles off shore bearing about 060 degrees true from Kahala Point Light.

Although the vessel was taking water in the forward holds, Appellant started to return to Honolulu but this plan was abandoned and the ship was beached farther south along the coast of Kauai after the engine room became flooded and all power was lost. There was no loss of life or injury and several thousand dollars worth of cargo was salvaged.

There is no record of prior disciplinary action having been taken against Appellant's documents.

OPINION

Since the errors assigned on appeal are related principally to the fact finding of the Examiner, it is appropriate to mention that the review of this record is de novo in view of the fact that the evidence consists solely of the record of the Marine Board of Investigation. This is the procedure followed in admiralty where the findings of fact in the District Court are based completely upon depositions and exhibits. Harris V. Sabine Transportation Company (CCA 5, 1953), 202 F. (2d) 537.

The Examiner's decision being based upon this same cold record, he was in no better position to appraise the evidence. After giving due consideration to the findings of the Examiner, I have modified some of them in order that my findings of fact and conclusions are more closely in conformance with the evidence before me. Some of these modifications are in agreement with the findings of fact proposed by Appellant; but his other findings and conclusions are rejected for the reasons set forth infra.

The discrepancy between my findings and the proposed findings concerning the bearing of Kahala Point Light at 1925 is relatively immaterial because this was merely an estimate of the bearing. Hence, it is not reliable evidence which may be used to determine accurately the position of the ship. Therefore, it is not important whether or not this estimated bearing was plotted. (But when this is plotted as a one point bearing, it agrees with the other reliable evidence as to the course line the ship was following.) For the same reason, the variance with respect to the sighting of a light by the Junior Third Mate shortly before 2000 (Appellant's proposed finding states "at approximately 2004") is not considered to be seriously injurious to Appellant's cause. In addition, the latter bearing was not reliable because the light was observed only momentarily and it was not identified as Kahala Point Light.

I have accepted Appellant's proposed findings that the fathometer was turned on "at about 1930 or 1935"; and I have found that it did not register any depth of water when it was checked both before and after the grounding. This does not lead to the conclusion that the ship was not in dangerous waters at 2005 since the chart shows that the 200 fathom curve in this area is about 1.5 miles from shore; and the ship would cover this distance in six minutes at 15 knots.

Appellant's proposed finding that "at 1955 . . . the light was observed 2 points forward of the port beam" is rejected as not being in accord with the weight of the evidence. Another heavy rain squall struck at about 1955 and visibility was most probably reduced to considerably less than one mile. The evidence also indicates that the LUCKENBACH was more than 1.5 miles away from Kahala Point Light and all other points ashore prior to the time when Kahala Point Light was abeam to port. Consequently, no lights on the beach could have been seen from the ship at 1955 if visibility from the ship was limited to 1.5 miles or less by the squall.

The observation of only about 20 feet of clear water, when the breakers were reported to the bridge by the lookouts, would not exclude the probability that the ship hit the outermost edge of an inshore reef with her port side and that the momentum of the ship carried it past the reef into the open water again.

Since there was obtained only one reliable bearing on Kahala Point Light, it is impossible to ascertain by plotting bearings, the distance of the light when it was passed abeam. The only other affirmative line of evidence is supplied by the testimony of Mr. Mant and the evidence of the damage to the ship.

Mr. Mant stated that he saw the lights of a ship which was heading in a northerly direction about 500 yards offshore. Although this estimate of distance must be erroneous to some extent, the

fact that he observed the ship for a period of about seven minutes during part of which time the visibility was limited by rain squalls, precludes the supposition that the ship was considerably farther from shore than approximately 1.5 miles while she was under Mr. Mant's observation.

If the LUCKENBACH passed Kahala Point Light abeam at a distance of about 1.5 miles, then the ship would have passed over the inshore shoals and rocky reefs which were two to three miles away in the vicinity of the promontory north of Papaa Bay. The 222 foot promontory could then have accounted for the fact that the lights of the ship became hidden from Mr. Mant's view at about 2004. The time to cover this distance of between two and three miles at 15 knots would be between 8 and 12 minutes. This fits in substantially with the time between the 45 degree bearing at 1950 and the striking at 2005 because the ship passed abeam of Kahala Point Light at about 1956 if her distance abeam of the light was 1.5 miles.

Consequently, the most probable inference to be drawn from all the evidence is that the LUCKENBACH ran aground on the shoals or on a reef to the northward of Papaa Bay while she was being navigated too close to shore. This conclusion is supported by the presence in the record of evidence that there are no known outlying uncharted reefs or pinnacle rocks in the area where the stranding occurred; and the absence of any evidence to the contrary. Corroboration also appears in the testimony of the Boatswain who stated that when he heard the noise as the ship struck, he knew it was the reef. This predicament could have been caused by an average southwesterly set of .5 knots for the 89 to 90 miles - or by an even weaker current if there was a westerly gyro error.

Appellant contends that the ship was well offshore when she struck a submerged object, for the reason that the vessel was 3 miles out at the time of the 2030 fix and she had drifted only about three-quarters of a mile between the time of the incident and when the fix was obtained. This is not persuasive because although the ship may have been dead in the water after proceeding three-quarters of a mile, her speed over the ground was not stopped as she drifted with the current. This contention would be much more convincing if it were coupled with reliable evidence as to the position of the ship, supported by bearings, while she was within several miles of Kauai Island.

CONCLUSION

Appellant was negligent in that: he originally set his course to pass, at night, 4.5 miles abeam of Kahala Point Light and within 3 miles of the reefs beyond the light although the regular shipping traffic passed about 8 to 10 miles abeam of the light; he made no allowance for gyrocompass error or for the set and drift of the current over a distance of 87 miles; he failed to fix the position of the ship by obtaining and plotting accurate bearings of Kahala Point Light or from the radio direction finder as the ship approached Kauai; and he failed to reduce speed or direct the course of the ship farther from the island of Kauai even though the position of the ship had not been ascertained and visibility was sometimes less than one mile due to the rain squalls and nightfall.

I conclude that this negligence contributed to the grounding of the ship in the dangerous waters off the coast of Kauai Island and that the allegations contained in the specifications are supported by reliable, probative and substantial evidence.

ORDER

Appellant has been without the use of his License No. 122522 (or a temporary license) for a substantial portion of the time between the date of the Examiner's original decision on 19 October, 1951, and this date.

Therefore, the order of the Examiner dated at Seattle, Washington, on 19 September, 1952, is modified to read that the twelve (12) month period of suspension shall become retroactively effective as of 19 October, 1951.

As so MODIFIED, the order of the Examiner is AFFIRMED.

Merlin O'Neill
Vice Admiral, United States Coast Guard
Commandant

Dated at Washington, D.C., this 12th day of June, 1953.